

**U.S. General Services Administration (GSA)**

**PRESIDENTIAL TRANSITION “HOT ISSUES” INFORMATION PAPER**

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***SUBJECT: Federal Management Regulation Bulletin - Facilities Access and Gender Identity Discrimination***

Under the FMR, (41 CFR §102-74.445, 41 CFR §102-74.50), all Federal agencies occupying property operated under, or subject to, the authorities of GSA must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

GSA is issuing policy clarification that, as per Title VII, Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) as interpreted by the Federal entities with statutory enforcement authority, the FMR prohibition against sex discrimination includes gender identity.

Due to GSA's oversight of nearly 60% of all Federal locations, this clarification effectively provides a single, consistent policy for nearly every Federal agency that ensures equity of facilities access by everyone consistent with each individual's gender identity.

POC: Madeline Caliendo, Associate Administrator for Civil Rights, Office of Civil Rights, (202) 501-0767) or Dennis Oden, Director, Civil Rights Programs Division, Office of Civil Rights, 202-417-5711

**1. BACKGROUND:**

**a. General Background:**

- In recent months, the issue of access to restrooms and other facilities at properties and locations under the jurisdiction, custody, or control of GSA has become a frequent question both internally and externally.
- The Department of Justice (DOJ) filed a complaint in Federal court against the state of North Carolina due to the passing and implementation of The Public Facilities Privacy & Security Act (AKA House Bill 2, or H.B. 2). H.B. 2 restricts restroom and other single sex facilities to what the state calls “biological sex”, which is in direct opposition to various Federal laws regarding civil rights.
- With more than 200 locations in North Carolina under the authority of GSA, H.B. 2 has direct conflict with GSA's requirement to operate in compliance with Federal law and regulation.

**b. Issues:**

- Although the overarching guidance for Federal entities is clear and consistent, the question of how that guidance looks in practice hasn't been fully clarified or implemented prior to the GSA effort.

## **2. SCOPE AND EFFECT:**

### **a. Impact on GSA's Customers:**

- The clarification applies to all Federal entities occupying space under the jurisdiction, custody, or control of GSA. This encompasses nearly all Federal agencies (and 9,200 locations, nearly 60% of all Federal space).
- This provides a unified approach, consistent with the official guidance in place for the Federal sector.
- No new requirements are imposed, and agencies are free to issue additional guidance as needed.

### **b. Impact on the Private Sector and State & Local Governments:**

- This nondiscrimination clarification applies to all GSA-controlled locations, for both leased and owned space. As Federal law supercedes state and local laws when they conflict, the FMR Bulletin is a direct avenue addressing the issue and supercedes local and state ordinances to the contrary.

## **3. ACTION(S) PLANNED OR REQUIRED:**

- Once signed by the Administrator, GSA will coordinate with all affected agencies to ensure widespread dissemination of the clarified position.
- Additionally, the FMR Bulletin will be published in the Federal Register, with additional communication methods under consideration for the public at large after consultation with the White House Communications Team.
- The interpretation of sex discrimination including gender identity is not specifically stated in applicable laws and is a point of contention by some entities outside of the Federal sector. Several legal decisions support this inclusion, but opposed interests by both private entities and some congressional members may introduce conflicts with ongoing GSA operations through negative media and public relations efforts.
- The bulletin is in line with the current administration's standpoint and has been vetted through leadership at EEOC, DOJ, and ED, and no opposition is expected from the covered Federal partners.

## **4. KEY STAKEHOLDER INTEREST:**

- The interpretation of sex discrimination including gender identity is not specifically stated in applicable laws and is a point of contention by some entities outside of the Federal sector. Several legal decisions support this inclusion, but opposed interests by both private entities and some congressional members may introduce conflicts with ongoing GSA operations through negative media and public relations efforts.
- The bulletin is in line with the current administration's standpoint and has been vetted through leadership at EEOC, DOJ, and ED, and no opposition is expected from the covered Federal partners.

**5. FISCAL YEAR 2017/2018 BUDGET IMPACT:**

As this bulletin is only a clarification and implementation rests with each individual Federal entity, there is minimal expected budgetary impact outside of routine matters of business (e.g., labor hours by GSA staff in communicating the information and coordinating implementation).